

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 4598 of 2006

Date of decision : 1.9.2006.

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Parties Name

Hari Singh

..... Petitioner

vs.

M/s. Pal Spinners and others

..... Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Vikram Singh, Advocate
for the petitioner.

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S.N. Aggarwal, J.

The petitioner is the plaintiff in the learned trial Court. He filed a civil suit for declaration, mandatory injunction and for permanent injunction against the respondents. An application for interim stay was also filed under Order 39 Rules 1 and 2 read with Section 151 CPC. It was alleged in the said application that respondent No.1 had become co-sharer with the petitioner, after he purchased the land from the co-sharers. The partition had not taken place but the said defendants were raising construction on the suit land without seeking its partition. It will change the nature of the suit land, which is jointly owned by the parties. Hence, it was prayed that

the respondents be restrained from raising construction and from changing the nature of land during the pendency of the civil suit. It was also prayed in this application that a Local Commissioner be appointed for getting the land demarcated.

This application was contested by the respondents. The said application was dismissed by the learned trial Court vide impugned order dated 13.6.2006 on the plea that the petitioner himself has constructed a commercial complex on the suit land, without any objection from the co-sharers and therefore, he has no right to stop the co-sharers from using the land. It was also held that as per the report of the Local Commissioner, already on the file the land on which the construction was being raised by respondent No.1, was in the separate and independent possession of the co-sharer.

Hence, the present petition.

The submission of the learned counsel for the petitioner was that respondent No.1 was raising construction on a piece of land more than his own share and therefore, the petitioner has the right to stop him and for the same reason he had applied for the appointment of the Local Commissioner, who could demarcate the land.

These submissions have been considered. The respondents had alleged that the partition has already taken place. If the parties are co-sharers then the petitioner can apply for the partition of the suit land, which is agricultural. Therefore, the application for appointment of Local Commissioner is not maintainable as every co-sharer is in joint possession of every inch of the joint land.

Otherwise also, it was also not disputed that the petitioner

himself has raised construction on a piece of land which was in his possession. Therefore, equity is against the petitioner, who now seeks stay order against the co-sharers. If the petitioner himself has raised construction, he cannot stop the other co-sharers to do the same or to utilise the land which is in their possession. The application has been rightly dismissed by the learned trial Court vide order dated 13.6.2006.

There is no merit in the present petition and the same is dismissed.

(S.N.Aggarwal)
Judge

1.9.2006.
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